is the same as the common law this Court followed in the Illinois case of Hardin vs. Jordan.

This Court refused to follow a later rule in an Illinois case, contrary to the earlier rule of that state upon the common law on that point. *Trustees of Schools vs. Schroll,* 120 Ill., 509; 9 West Rep. 744. Cited and fully discussed in Hardin-Jordan at 140 U.S. 385 et seq. This Court, then and at that point in the Hardin-Jordan case, found and determined the applicable common law itself. We think that, that should be done here, and that the findings of the trial court be followed. After all, Hardin-Jordan has become a settled rule of property and land titles.

III.

Fifth and Fourteenth Amendments

We respectfully submit that the opinion of the Colorado Supreme Court on ownership of the lake beds deprives this petitioner of rights vested in him by Federal and State patents, all issued pursuant to Acts of Congress. That opinion changes the rules of the game after it has been played and as such is a violation of those Amendments. We know of no higher authority than the Amendments themselves, and we thought, and think now, that it was and is unnecessary, at least then and at this time, to overload our Petition and this Reply with further decisions of this Court on the point.

IV.

Partition

No one contends that a Federal Question arises by reason of the prayer for partition alone, or in the absence of other facts, as suggested in item 3 of Respondent's Answer. Our Petition expressly stated that partition is involved, "if, and only if, Federal Jurisdiction exists because of, or as an incident to Federal Jurisdiction of other questions". We refrained in our Petition, and we again refrain here, from further arguing the partition question for the reason that

"it is not now involved in the question of the granting of the writ prayed for." Partition probably is an independent, separate, and separable question, which may or may not be later involved, even if the Writ is issued.

V.

Respondents' Citations

All of the cases in this Court, cited by Respondents, recognize that the title in those cases involved a Federal question even though they do apply state law. The Kaukauna Case, 142 U.S. 254, 35 L. Ed. 1004, 12 S. Ct., 173, was decided by the same court in the same year (1891) as Hardin vs. Jordan. The Kaukauna Case did not cite or mention the Hardin Case and it certainly did not overrule or question it. Kaukauna involved a different set of facts than both the Hardin and this case. All of the cases mentioned were river cases and none involved inland, non-navigable lakes.

Smith vs. Town of Fowler (1959) 138 Colo. 359, 333 P. (2d) 1034, was another river case, and a Mexican land grant case at that. The trial court found, and our Supreme Court followed along with the trial court's findings that under the evidence the grant made the bank of the Arkansas River, and NOT the center of the river that had later changed its course, the boundary. Our Supreme Court (Colorado) in that case followed the findings of the trial court. They refused to do so here even without further evidence.

Of course, as unnecessarily stated by Respondents, "under given factual situation(s) the meander line is in fact the boundary line".

Those "given factual situation(s)" in those cited cases, and the two other exceptions of the Hardin-Jordan case, do NOT exist here.

VI.

Conclusion

We respectfully request that a Writ of Certiorari issue.

Respectfully submitted,

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